

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF: :

Washington 009, LLC :

t/a McFadden's : Show Cause

2401 Pennsylvania Ave., NW : Hearing

Retailer CR - ANC-2A : (Status)

License No. 60591 :

Case #14-251-00347, :

Case #14-CMP-00127, :

Case #14-CMP-00003 and :

Case #15-AUD-00001 :

(Follow-up to Summary :

Suspension Hearing on :

January 9, 2015) :

January 28, 2015

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

NICK ALBERTI, Acting Chair
DONALD BROOKS, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

AMY SCHMIDT, OAG

1 P-R-O-C-E-E-D-I-N-G-S

2 10:52 a.m.

3 CHAIRPERSON MILLER: All right. The
4 next cases on our calendar are Case No. 14-251-
5 00347, 14-CMP-00127, 14-CMP-00003 and 15-AUD-
6 00001 and this is McFadden's located at 2401
7 Pennsylvania Avenue, N.W., License No. 60591, in
8 ANC-2A. Good morning.

9 I was not on this case and so I'm not
10 going to be participating. I'm going to turn
11 this over to Mr. Alberti and I will be back after
12 this case. Thank you.

13 ACTING CHAIR ALBERTI: Are we ready?
14 Good morning, everyone. Okay. The next case we
15 are going to call is a Show Cause (Status)
16 Hearing for cases, and correct me if I'm wrong
17 here, but I believe it is Cases 14-251-00347,
18 Case 14-CMP-00127, Case 14-CMP-00003 and Case 15-
19 AUD-00001.

20 Can I have introductions, please?

21 MS. SCHMIDT: Good morning. Amy
22 Schmidt, Assistant Attorney General on behalf of

1 the District of Columbia.

2 MR. O'BRIEN: Stephen O'Brien for the
3 licensee and I'm accompanied by the licensee's
4 managing member, John Sullivan.

5 ACTING CHAIR ALBERTI: Okay. Thank
6 you. I believe one of these cases stems from a
7 Summary Suspension Hearing and that would be Case
8 No. 14-251-00347. Is that correct?

9 MS. SCHMIDT: Yes, but it is also --
10 there was also a Show Cause Hearing today. We
11 are doing both today.

12 ACTING CHAIR ALBERTI: Right. Okay.
13 I just wanted to put on the record that is how we
14 got here --

15 MS. SCHMIDT: Thank you, yes.

16 ACTING CHAIR ALBERTI: -- from that
17 one. Okay. Great. I would like to welcome
18 everybody here. Is there any issue with notice
19 on any of these? I mean, had notice been served?
20 I don't know what the status is.

21 MR. O'BRIEN: Yes. Notice has been
22 served. And at the last session we were here in,

1 I will reiterate this morning, we have waived any
2 timeliness objections to the notice.

3 ACTING CHAIR ALBERTI: For all four of
4 these?

5 MR. O'BRIEN: For all four.

6 ACTING CHAIR ALBERTI: Okay. Great.

7 MR. O'BRIEN: The desire is to put
8 this to rest once and for all today.

9 ACTING CHAIR ALBERTI: Okay.

10 MR. O'BRIEN: If the Board is so
11 inclined.

12 ACTING CHAIR ALBERTI: So the notices
13 have been served and understood and read?

14 MR. O'BRIEN: Yes.

15 ACTING CHAIR ALBERTI: Great.

16 MR. O'BRIEN: Yes, understood, yes.

17 ACTING CHAIR ALBERTI: Thank you. All
18 right. Thank you. I just wanted to make sure we
19 had that on the record everyone. Okay. So --

20 MR. O'BRIEN: We will waive a formal
21 reading of them while we are at it.

22 ACTING CHAIR ALBERTI: Thank you very

1 much, Mr. O'Brien.

2 MR. O'BRIEN: Okay.

3 ACTING CHAIR ALBERTI: Are there any
4 preliminary hearings in these four cases?

5 MS. SCHMIDT: Yes. There is a
6 preliminary matter that we -- the Government is
7 offering an Offer in Compromise today. And it
8 should be noted that the Government does realize
9 the seriousness of the offense, of a major
10 offense which was 14-251-00347.

11 However, since McFadden's is going --
12 is part of the OIC and had previously announced
13 they will not be operating any more in the
14 District of Columbia, the District is able to
15 move forward with this OIC today.

16 However, we are not going to minimize
17 the serious offenses that occurred on December
18 27th.

19 ACTING CHAIR ALBERTI: Okay.

20 MS. SCHMIDT: But the Offer in
21 Compromise is as follows: It consists of the
22 following terms:

1 (1) A \$7,000 fine for Case No. 14-CMP-
2 00003 and Charge 1 would be a \$3,000 fine and
3 Charge 2 would be a \$4,000 fine.

4 (2) A \$3,000 fine for Case No. 14-CMP-
5 00127.

6 (3) A \$750 fine for Case No. 15-AUD-
7 00001.

8 (4) And a \$2,000 fine for Case No. 14-
9 CMP/14-251-00347.

10 The total fine amount shall be \$12,750
11 to be paid on January 28, 2015.

12 (5) The license shall remain suspended
13 until the fine is paid.

14 (6) The license shall remain suspended
15 until a transfer of ownership application is
16 approved by the Board.

17 (7) And a transfer of ownership
18 application must be filed with ABRA within 60
19 days from today's date or the license shall be
20 deemed surrendered for cancellation.

21 (8) The current owners of McFadden's
22 shall not have an equity ownership interest in

1 the transferee's business.

2 (9) There would be no -- there are no
3 other pending violations or investigations for
4 events predating January 20, 2015 which would
5 impede the transfer of the liquor license to a
6 new owner.

7 ACTING CHAIR ALBERTI: Okay. Very
8 good. I'm just going to summarize the Offer in
9 Compromise as I have heard it.

10 We have a total fine of \$7,000 for
11 Case No. 14-CMP-00003. A total fine of \$3,000
12 for Case No. 14-CMP-00127. A fine of \$750 for
13 Case No. 15-AUD-00001. And a \$2,000 fine for
14 Case No. 14-CMP/14-251-00347. That's a total
15 fine of \$12,750 to be paid on or before January--
16 oh, today.

17 MR. O'BRIEN: Today.

18 ACTING CHAIR ALBERTI: Which is
19 January 28th. The license shall remain suspended
20 until the fine is paid. The license shall remain
21 suspended until the transfer of ownership
22 application is approved by this Board. The

1 transfer of ownership application must be filed
2 with ABRA within 60 days of today's date. And if
3 it is not, the -- if the application is not
4 received, the license will be deemed surrendered
5 or canceled or surrendered for cancellation.

6 The current owners of McFadden's will
7 not have any equity ownership interest in the
8 transferee's business. And we have a statement
9 that there are no pending violations or
10 investigations for events predating January 28th,
11 which will impede the transfer of the license.

12 Those are the terms as I have heard
13 them. Mr. O'Brien, does your client understand
14 and agree to those terms?

15 MR. O'BRIEN: He does.

16 ACTING CHAIR ALBERTI: Does he waive
17 his right to a hearing based on acceptance of
18 those terms?

19 MR. O'BRIEN: He does.

20 ACTING CHAIR ALBERTI: Okay. Thank
21 you. Does anyone want to make a statement before
22 we -- I put this to the Board?

1 MR. O'BRIEN: I would just echo what
2 my colleague said. No one minimizes the
3 seriousness of this. The decision having made to
4 discontinue the business after New Year's Eve
5 anyway. Unfortunately, it didn't quite get to
6 that mark. But this is intended to once and for
7 all resolve this.

8 I do note, I did mention, I think from
9 inflection the Chair may have mentioned is we
10 assure the Board that this is not a contemplated
11 transfer to some affiliate or friend or brother.
12 The current ownership of McFadden's will have
13 nothing to do with this new business.

14 ACTING CHAIR ALBERTI: Okay. Thank
15 you, Mr. --

16 MR. O'BRIEN: Other than --

17 ACTING CHAIR ALBERTI: -- O'Brien.

18 MR. O'BRIEN: -- hopefully to get paid
19 for the assets, the tables, the chairs and things
20 like that.

21 ACTING CHAIR ALBERTI: I understand.
22 Okay. Thank you. I will just say that this

1 Board will be looking very closely and examining
2 that transfer application.

3 MR. O'BRIEN: Yes.

4 ACTING CHAIR ALBERTI: Very closely.

5 MR. O'BRIEN: I do not represent the--

6 ACTING CHAIR ALBERTI: That's fine.

7 I just want to -- but you understand that?

8 MR. O'BRIEN: I understand that.

9 ACTING CHAIR ALBERTI: That will be of
10 utmost importance that there is a clean break
11 between the current ownership and the transferees
12 and we will be looking at that very closely.

13 One of the reasons I am accepting --
14 I will accept this, am going to accept this Offer
15 in Compromise is because the owner is
16 surrendering the license and will not be in
17 business at this location any longer. So that is
18 the crux of my decision really.

19 So any other Board Members want to
20 speak before I make a motion? Mr. Silverstein?

21 MEMBER SILVERSTEIN: Yes, thank you,
22 Mr. Chair. I don't want to get in the way of the

1 burial, so I will support this. But I want to
2 take this time to express my deepest appreciation
3 and gratitude to the investigative staff of this
4 Agency for the work that they did in this case.

5 I have never seen anything better from
6 any D.C. Agency. The work that they did in
7 investigating this case, the work that they did
8 in securing videotapes from surrounding areas,
9 coming in at odd hours on their own time, coming
10 in on New Year's Day and looking for things that
11 the police could use because of the criminal
12 actions that may have taken place here.

13 The cooperation that we had, that our
14 staff had with the MPD in this case has just been
15 the finest I have ever seen. And this is -- if
16 we are going to be putting this case to rest now,
17 it is important that our staff know that we
18 appreciate the professionalism and the dedication
19 that they have shown.

20 ACTING CHAIR ALBERTI: Anyone else
21 want to --

22 MEMBER SHORT: I concur totally with

1 Board Member Silverstein's analysis of the work
2 that was put in by ABRA on this investigation.
3 And to the licensee, we would just like to say
4 hopefully if you ever open a business again, that
5 it will be a lot better than this one. That's
6 all I have.

7 MR. O'BRIEN: Thank you.

8 ACTING CHAIR ALBERTI: Thank you, Mr.
9 Short. As you can see, this Board is very proud
10 of our investigative staff and rightfully so.

11 So I will move that we accept the
12 Offer in Compromise as presented to us. Is there
13 a second?

14 MEMBER SHORT: Second.

15 ACTING CHAIR ALBERTI: Okay.

16 All those in favor raise your hand or
17 all those say aye.

18 ALL: Aye.

19 ACTING CHAIR ALBERTI: All those
20 opposed? Thank you. The motion carries 5-0-0.

21 MR. O'BRIEN: Thank you.

22 ACTING CHAIR ALBERTI: And that

1 concludes this case. Thank you for coming.

2 MR. SULLIVAN: Thank you.

3 (Whereupon, the Show Cause (Status)
4 Hearing in the above-entitled matter was
5 concluded at 11:04 a.m.)
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